

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Carl Dean Edwards,

5 Plaintiff

6 v.

7 Clark County, Nevada, et al.,

8 Defendant  
9

2:13-cv-01530-JAD-PAL

Order Certifying That *In Forma*  
*Pauperis* Status Should Not Continue  
on Appeal

10 Pro se plaintiff Carl Dean Edwards sued defendants under 42 U.S.C. § 1983 for claims  
11 arising out of the incarceration of his son, K.E., in juvenile custody, and his parental right to visit and  
12 communicate with his son. Magistrate Judge Peggy Leen granted Edwards's application to proceed  
13 *in forma pauperis* and, after screening his complaint, dismissed this case for failure to state a claim  
14 upon which relief could be granted but gave Edwards until April 18, 2014, to file an amended  
15 complaint.<sup>1</sup> By May 20, 2014, Edwards had failed to file an amended complaint or explain why he  
16 had failed to do so; Magistrate Judge Leen recommended that this case be dismissed for Edwards's  
17 failure to comply with her prior order.<sup>2</sup>

18 On June 4, 2014, Edwards filed a "notice of appeal"—which I liberally construed as an  
19 objection to Judge Leen's report and recommendation.<sup>3</sup> Although I agreed with Magistrate Judge  
20 Leen's conclusions based on the information she had in front of her at the time, I found that Edwards  
21 had presented me with new information that "his amended complaint was refiled . . . and repeatedly  
22 returned to the pod officers and Clark County's High Desert Prison" where he was incarcerated and,  
23 therefore, out of an abundance of caution, I sustained Edwards's objection and permitted Edwards  
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26 <sup>1</sup> ECF No. 5.

27 <sup>2</sup> ECF No. 7 at 1.

28 <sup>3</sup> ECF No. 13.

1 one final opportunity to file an amended complaint.<sup>4</sup> I cautioned Edwards, however, that he must file  
2 an amended complaint by May 4, 2015.<sup>5</sup> Edwards failed to avail himself of the final extension. So  
3 on May 6, 2015, after finding that the five factors in *Pagtalunan v. Galaza*<sup>6</sup> weighed in favor of  
4 dismissal, I dismissed this case with prejudice.<sup>7</sup>

5 On May 11, 2015, Edwards appealed my dismissal order to the Ninth Circuit.<sup>8</sup> It was not  
6 until a month later that he finally—but far too late—filed an amended complaint in this now-closed  
7 case.<sup>9</sup> The Ninth Circuit has referred this matter back to me to determine whether Edwards’s *in*  
8 *forma pauperis* status should continue on appeal, which requires me to determine whether his appeal  
9 is frivolous or taken in bad faith.<sup>10</sup>

10 This case was dismissed at the trial level for failure to state a claim upon which relief could  
11 be granted, and Edwards was given two chances to amend—both of which he squandered.  
12 Accordingly, for the reasons set forth in my dismissal order,<sup>11</sup> I HEREBY CERTIFY that this appeal  
13 is frivolous and taken in bad faith and that *in forma pauperis* status should not continue on appeal.

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18 <sup>4</sup> ECF No. 9.

19 <sup>5</sup> *Id.* at 2.

21 <sup>6</sup> See *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d  
22 1258, 1260 (9th Cir. 1992) (listing the five factors courts use to determine whether dismissal of a  
claim for failure to prosecute or failure to comply with a court order is appropriate).

23 <sup>7</sup> ECF No. 10.

24 <sup>8</sup> ECF No. 13.

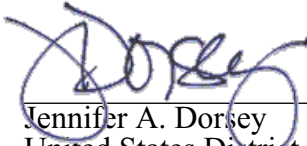
25 <sup>9</sup> ECF No. 12.

26 <sup>10</sup> See 28 U.S.C. § 1915(a)(3); see also *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir.  
27 2002).

28 <sup>11</sup> ECF No. 10.

1 The Clerk of Court is directed to send a copy of this order to the U.S. Court of Appeals for  
2 the Ninth Circuit (reference case number 17-15731).

3 Dated this 24th day of April, 2017.

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5 Jennifer A. Dorsey  
6 United States District Judge